

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN PERKINS,

Plaintiff,

v.

T. ANDERSON *et al.*,

Defendants.

Case No. C06-5160FDB

REPORT AND  
RECOMMENDATION:

**NOTED FOR:  
JUNE 9<sup>TH</sup>, 2006**

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff is an inmate currently incarcerated at the Clallam Bay Corrections Center. Plaintiff is proceeding *in forma pauperis*. (Dkt. # 5). Plaintiff filed this action to challenge a disciplinary hearing in which he lost 100 days good time credits. (Dkt. # 6), Plaintiff specifically seeks restoration of good time and custody points taken from him. (Dkt. # 6).

FACTS

Plaintiff was infracted while housed at the Olympic Correction Center. He had a hearing and the hearings Lieutenant found him guilty and recommended loss of good time credits and custody points. After the hearing plaintiff was transferred to Clallam Bay Corrections Center.

DISCUSSION

When a person confined by the state is challenging the very fact or duration of his physical

imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted available state remedies **has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.**" Heck v. Humphrey, 512 U.S. 477, 487 (1994)(emphasis added). The court added:

Under our analysis the statute of limitations poses no difficulty while the state challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.

Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be made based upon whether 'the nature of the challenge to the procedures [is] such as necessarily to imply the invalidity of the judgment.' *Id.* If the court concludes that the challenge would necessarily imply the invalidity of the judgment or continuing confinement, then the challenge must be brought as a petition for a writ of habeas corpus, not under § 1983." Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir.1997) (*quoting* Edwards v. Balisok, 520 U.S. 641 (1997)).

Plaintiff is challenging the propriety of the decision to revoke good time credits and this action must be filed as a habeas corpus petition. This action should be **DISMISSED WITHOUT PREJUDICE**. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **January 7<sup>th</sup>, 2006**.

DATED this 15<sup>th</sup> day of May, 2006.

/S/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge